

Update: Crime Victim Rights Manual

CHAPTER 10

Restitution

10.5 Persons or Entities Entitled to Restitution

A. Any Victim of the Course of Conduct That Gave Rise to the Conviction or Adjudication

On page 239, add the following new subsection after subsection 2 and before Section B:

3. The Court may not order restitution to a government agency for routine costs of investigating and prosecuting crimes

Citing to the *Crigler* Court's interpretation of the applicable statute, the Court of Appeals vacated a trial court's order that the defendant pay the Barry County Sheriff's Department \$2,500.00 restitution for the costs incurred in its investigation of the defendant. *People v Newton*, ___ Mich App ___, ___ (2003). The *Newton* Court, like the *Crigler* Court, concluded that the general costs of a criminal investigation are not "direct [] financial harm" caused by a defendant's crime and thus are not expenses for which a defendant may be made to pay restitution. In *Newton*, the defendant was convicted of selling alcohol without a license from a barn on the defendant's property where parties were frequently held and informally advertised. The *Newton* Court adopted the *Crigler* Court's dicta and held that "the cost of the investigation would have been incurred without regard to whether defendant was found to have engaged in criminal activity." ___ Mich App at ___.

10.9 Calculating Restitution Where the Offense Results in Physical or Psychological Injury, Serious Bodily Impairment, or Death

C. Triple Restitution for Serious Bodily Impairment or Death of a Victim

Insert the following case summary on page 245 before the paragraph beginning with “Mental or emotional injuries . . .”:

In *Kreiner v Fischer*, ___ Mich ___ (2003), in lieu of granting leave to appeal, the Supreme Court vacated the Court of Appeals’ decision and remanded the case to the Court of Appeals with specific instructions regarding the definition of “serious impairment of a body function” and its application to the facts:

“‘Although a *serious* effect is not required, *any* effect does not suffice either. Instead, the effect must be on one’s *general* ability to lead his normal life. Because we believe that neither of the lower courts accurately addressed this issue, we remand this case to the Court of Appeals for it to consider whether plaintiff’s impairment affects his general ability to lead his normal life.’”

In *Kreiner*, uncontested evidence showed that the plaintiff sustained lower back and leg injuries in a motor vehicle collision and that the effects were likely chronic and no medical intervention could reverse the damage. Even though the trial court acknowledged that the plaintiff’s injuries were “objectively manifested” and involved an “important body function,” the court granted the defendant’s motion for summary disposition based on its conclusion that the plaintiff’s impairment was “not serious enough” to affect the plaintiff’s ability to lead a normal life. On remand, the Court of Appeals again reversed the trial court, citing the unambiguous statutory definition contained in MCL 500.3135(7) and quoting from an earlier opinion in the case:

“‘[T]he trial court ruled that as a matter of law the impairment was not “serious enough” to impinge on plaintiff’s ability to lead a normal life. This was error. The third prong of the statutory definition explicitly requires only that the impairment ‘affect[] the person’s general ability to lead his or her normal life.’” ___ Mich App at ___, quoting *Kreiner v Fischer*, 251 Mich App 513, 518 (2002).

The Court of Appeals emphasized that although the “effect” need not be serious, the statutory requirement is not satisfied by “any” effect. *Kreiner, supra* at ___. In reaching the same conclusion it reached when first presented with the dispute, the Court of Appeals explained:

“[O]ne’s general ability to lead his or her normal life can be affected by an injury that impacts the person’s ability to work at a job, where the job plays a significant role in that individual’s normal life Employment or one’s livelihood, for a vast majority of people, constitutes an extremely important and major part of a person’s life An injury affecting one’s employment and ability to work, under the right factual circumstances, can be equated to affecting the person’s *general* ability to lead his or her normal life.” *Kreiner, supra* at ____ (emphasis in original).